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C O N F I D E N T I A L SECTION 01 OF 03 PRISTINA 000058

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DEPT FOR DRL, INL, EUR/SCE  
NSC FOR HELGERSON

E.O. 12958: DECL: 02/12/2019  
TAGS: [PGOV](#) [PINR](#) [PREL](#) [KV](#) [UNMIK](#)  
SUBJECT: KOSOVO: CONTINUED PROGRESS, CHALLENGES AT KOSOVO  
PROPERTY AGENCY

REF: 08 PRISTINA 472

Classified By: Ambassador Tina S. Kaidanow for Reasons 1.4 (b), (d).

11. (SBU) SUMMARY. The Kosovo Property Agency (KPA) continues to operate successfully despite lack of cooperation from the Serbian government. As of November 2008, 18,839 out of the near 40,000 claims filed with KPA had been adjudicated. (Note: KPA's caseload consists mainly of commercial and agricultural land claims. The UNMIK Housing and Property Directorate - KPA's predecessor agency - settled nearly 30,000 housing claims prior to being folded in to the KPA in 2006. End Note.). Progress has also been made in individualizing and delivering KPA decisions, with new benchmarks established for these and other areas of operation in the KPA's 2009 Business Plan. After the withdrawal of UNMIK from the KPA in December 2008, EULEX has indicated that it is ready and willing to assume the role of interlocutor with the Serbian Government in UNMIK's place while the Kosovo government is preparing to name its designated two board members. EULEX has also raised the idea of shifting thousands of non-KPA property claims stuck in Kosovo's court system into the KPA system. Finally, we have looked into the Serbian government's claim that many potential KPA claimants missed the December 2007 cutoff for new claims; credible estimates of additional claimants number in the hundreds - not the tens of thousands that Belgrade insists exist. We will continue to be active in supporting the KPA as it works through these challenges. END SUMMARY.

#### Operations Continue

12. (SBU) As of November 2008, 18,839 out of almost 40,000 cases filed with the KPA had been adjudicated by the Kosovo Property Claims Commission (KPCC). On January 15 we were informed by KPA Executive Director Scott Bowen that the KPCC's upcoming February 2009 session would adjudicate approximately 2,000 additional cases. Bowen also reported that the process of individualizing KPA cases picked up steam towards the end of 2008. (Note: KPCC adjudications are "cover decisions," issued for groups of 20 to 400 similar claims. Once the cover decisions are issued, each individual claim must be registered and given a cover sheet with the KPCC cover decision affixed. At this point the claim is ready for pickup and, if necessary, enforcement. End Note.). The KPA's 2009 business plan sets a benchmark of 30 days

from KPCC cover decision to individualization for all claims adjudicated. It also includes a goal of 2,500 claims adjudicated during each bi-monthly KPCC session in 2009.

Who'll Talk to Belgrade?

13. (C) At the request of the ICO and other key international partners (including the U.S. and UK Embassies), UNMIK removed itself from the KPA in December 2008. The underlying reason for the request was that the Kosovo government was unlikely to continue to respect either the KPA or its decisions if UNMIK asserted authority over the process. UNMIK assented to the request willingly. Former UNMIK-appointed KPA Director Leonid Markaryan has told us on several occasions, most recently on January 28, that UNMIK's departure from the KPA was justified. Markaryan led discussions on the KPA with senior Serbian government officials over the last months of 2008, which he termed "fruitless." He has told us that he and others at UNMIK believe that Serbian officials have left unfulfilled commitments they made to re-open KPA offices in Serbia, commitments that were to serve as a precondition for UNMIK's continued involvement in the KPA. Markaryan told us in late December 2008 that he believed the Serbs had not shown good faith during these discussions and that SRSG Zannier saw no need for UNMIK's role in the process.

14. (C) Despite UNMIK's departure, the Serbian government continues to insist on UNMIK's involvement in the KPA and the extension of UNMIK regulation 2006/50 which established the agency. (Note: although the KPA exists in Kosovo law, which is identical to the UNMIK regulation (see reftel), the

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Serbian government has consistently demanded an UNMIK/UNSC 1244-related legal base for any continued cooperation with KPA. End Note.). In the absence of UNMIK, EULEX has indicated its willingness to assume the role of interlocutor with the Serbian government on KPA matters, given that EULEX has been accepted by both Serbia (as a UN-approved mission deriving authority under UNSCR 1244) and Kosovo (under the EU Joint Action of February 2008). At the January 15 KPA stakeholder's meeting, EULEX Property Rights Coordinator Declan O'Mahoney said that EULEX was prepared to engage Belgrade on KPA issues through its representative office in Belgrade.

Kosovo Appointees Needed

15. (C) At the same meeting, UK Ambassador Andrew Sparkes, Chairman of the KPA's governing board, said that he had been discussing KPA matters with the Kosovo government. Kosovo has the obligation to appoint two members of the five-person KPA board: one Kosovo Albanian and one Kosovo Serb. Once this has been done, the current stakeholder's group will officially become the five-member board. (Note: Sparkes and Embassy poloff were appointed to the board by ICR Peter Feith in June, 2008; the ICR will make one more appointment to join the two Kosovo government appointees. End Note.).

Shifting Non-KPA Claims Into the System

16. (C) O'Mahoney has also raised the idea of shifting thousands of property claims filed in the Kosovo court system (instead of the KPA) into the KPA system. On January 15 he explained that EULEX was conducting a survey of the civil court system's caseload, which is largely comprised of property cases. In O'Mahoney's opinion, Kosovo's court system possesses neither the expertise nor the professionalism necessary to adjudicate property claims. He also estimates that shifting non-KPA property claims to the KPA would accelerate overall resolution of property issues in Kosovo and provide consistent, reliable title documents to all successful claimants. (Comment: Our experience of Kosovo's court system leads us to agree with O'Mahoney's assessment and support his proposal. We await a detailed proposal for further evaluation. End Comment.).

## More Claims, Anyone?

¶7. (C) Also on January 15, the KPA stakeholder's group discussed the Serbian government's persistent claim that many thousands of potential KPA claimants failed to submit claims before the KPA closed claim intake in December 2007. Subsequent to this, we checked with PRM colleagues in Embassy Belgrade to get an estimate of the actual number of additional claimants that could appear should claim intake be reopened. On January 26, PRM reported that a survey of refugee NGOs and UN agency offices in Serbia yielded the collective opinion that no more than a few hundred Serbs (at most) would file claims if given the opportunity. This was in stark contrast to the Serbian Ministry for Kosovo, which insisted that twenty to thirty thousand more claims could be filed if intake was reopened.

## Comment: Progress Despite Challenges

¶8. (C) We are encouraged that the KPA, with neither a full board nor any real cooperation from Serbia, continues to function effectively in adjudicating cases and delivering decisions to the 93% of its claimants who are Kosovo Serbs. We agree with UNMIK's assessment that the Serbian government has so far failed to show good faith in discussing the KPA. Belgrade's unsubstantiated claim that tens of thousands of Serbs, if allowed, would file more cases is further evidence of this. Local UN officials have informed us at various fora that this issue has even made it as far as the UN Human Rights Commission in Geneva -- presumably following a Serbian referral (not confirmed). EULEX is willing and able to be the sole collocator between Belgrade and Pristina on this issue and we consider this the best way forward. Until the

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Serbian government becomes more cooperative and puts the interests of Kosovo Serb claimants ahead of its other political objectives, the KPA will continue to face challenges in performing its tasks. It is succeeding despite these obstacles, and we and our international partners continue to support the KPA in its work. END COMMENT.  
KAIDANOW